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Paper No. 17

In re Application of  
Karl Hartmut Sauer *et al*  
Application No. 09/526,783  
Filed: March 16, 2000  
Attorney Docket No. 1.G164.186

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: DECISION ON PETITION  
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This is a decision on the petition filed by facsimile transmission on July 8, 2003 by which petitioners request withdrawal of the holding that this application stands abandoned for failure to timely file a proper reply to the Office letter mailed on September 24, 2002. The petition is considered under 37 CFR 1.181 and no fee is required.

The petition is denied.

Petitioners allege that a timely reply to the Office letter in question was in fact filed. Petitioners support this allegation by including a copy of the reply. The reply has 37 CFR 1.8(a) certificate of mailing affixed thereto that is dated December 18, 2002.

However, the record shows that the Office letter in question was a final rejection. The record further shows that on December 30, 2002, an advisory action was mailed to petitioners. The advisory action states that the amendment in question would not be entered, and gives reasons for the refusal to enter the amendment.

It therefore appears that this application became abandoned for failure to file a proper reply to the final rejection. It does not appear from the record that the abandonment was the fault of the Office; rather, it appears that petitioners did not take steps to insure that a proper reply to the final rejection, within the meaning of 37 CFR 1.113 and 37 CFR 1.116 was filed. In general, see MPEP §§ 714.12 and 714.13. See also MPEP 711.03(c) which states that "[E]vidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment." It appears, therefore, that petitioners' proper course of action is to proceed pursuant to 37 CFR 1.137.

Petitioners may file a request for reconsideration of this decision, provided that such request is filed within two months of the date of this decision. The application is being returned to storage as an abandoned file.

PETITION DENIED.

E. Rollins-Cross, Director, Patent  
Examining Groups 3710 and 3720

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